

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

W BBQ HOLDINGS, INC., TWO AND EIGHT  
GOURMET, LTD., NORTH 43RD LLC, 8TH  
AND 42ND LLC, 64TH AND 3RD  
ENTERPRISES LLC, *et al.*,

Plaintiffs,

v.

LIBERTY MUTUAL FIRE INSURANCE  
COMPANY, *et al.*,

Defendants.

Case No. 1:20-cv-04160-MKB-JO

**LIBERTY MUTUAL FIRE INSURANCE COMPANY'S  
JOINDER IN DEFENDANTS' OPPOSITION TO PLAINTIFFS'  
MOTION TO REMAND**

Defendant Liberty Mutual Fire Insurance Company hereby joins in, adopts, relies upon, and incorporates herein by reference Defendants' Opposition to Plaintiffs' Motion to Remand served by Acceptance Indemnity Insurance Company on October 20, 2020 (the "Opposition").

In addition to the grounds, arguments, and authorities set forth in the Opposition, Liberty states that it is a Wisconsin corporation with a principal place of business in Massachusetts. The only plaintiffs insured by Liberty are:

- W BBQ Holdings, Inc., a Delaware corporation with a New York principal place of business;

- Two and Eight Gourmet, Ltd., a New York corporation with a New York principal place of business;
- North 43rd LLC, 8th and 42nd LLC, a New York limited liability company with a principal place of business in New York, whose member(s) upon information and belief are New York residents; and
- 64th and 3rd Enterprises LLC, a New York limited liability company with a principal place of business in New York, whose member(s) upon information and belief are New York residents.

Therefore, complete diversity exists between and among Liberty and the only plaintiffs with potential claims against it.

Liberty further states that denial of the plaintiffs' motion to remand is appropriate notwithstanding the lack of complete diversity between and among all plaintiffs and defendants because the parties and claims have been fraudulently misjoined. Fraudulent misjoinder exists, rendering it appropriate for the court to disregard the citizenship of non-diverse parties, where "the claims asserted by or against the non-diverse party who is joined lack a sufficient factual nexus to the case to support joinder under applicable rules of procedure." See In re Propecia (Finasteride) Prod. Liab. Litig., No. 12-cv-2049, 2013 WL 3729570, at \*4 (E.D.N.Y. May 17, 2013), citing Fed. R. Civ. P. 20(a). This Court has consistently held that, in the insurance context, claims made under different insurance policies, denied for different reasons, concerning different properties, and/or related to different alleged loss or damage "lack a sufficient factual nexus to support joinder" notwithstanding that the claims arose out of the same event and involve a single insurer defendant.<sup>1</sup>

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<sup>1</sup> Dolan v. Safeco Ins. Co. of Indiana, 297 F.R.D. 210, 212 (E.D.N.Y. 2014); Dante v. Nat'l Flood Ins. Program, No. 13-CV-6207, 2013 WL 6157182, at \*2 (E.D.N.Y. Nov. 22, 2013).

Accordingly, in the present action, which involves claims by ninety-two plaintiffs against forty-one insurer defendants and implicates dozens of unrelated policies, properties, and alleged losses, as well as the laws of numerous states, the plaintiffs' motion to remand should be denied on the basis of fraudulent misjoinder.

WHEREFORE, Liberty requests that this Court deny Plaintiffs' Motion to Remand.

ROBINS KAPLAN LLP

/s/ Meegan F. Hollywood  
Meegan F. Hollywood  
399 Park Avenue, Suite 3600  
New York, NY 10022  
Telephone: (212) 980 7400  
Facsimile: (212) 980 7499  
Email: MHollywood@robinskaplan.com

Matthew M. Burke, Esq. (*pro hac* vice motion forthcoming)  
ROBINS KAPLAN LLP  
800 Boylston Street, Suite 2500  
Boston, MA 02199  
Telephone: (617) 859-2711  
Facsimile: (617) 267-8288  
MBurke@robinskaplan.com

***Attorneys for Defendant Liberty Mutual Fire Insurance Company***

**CERTIFICATE OF SERVICE**

I, Meegan F. Hollywood, hereby certify that on this day, I electronically filed the within document with the Clerk of the Court using the CM/ECF system that will send notification of such filing(s) to all counsel of record. The document is available for viewing and downloading through the ECF system.

Dated: October 20, 2020

/s/ Meegan F. Hollywood  
Meegan F. Hollywood